

AMENDED IN ASSEMBLY AUGUST 15, 2005

AMENDED IN ASSEMBLY JUNE 30, 2005

AMENDED IN ASSEMBLY JUNE 6, 2005

AMENDED IN SENATE MARCH 29, 2005

SENATE BILL

No. 821

Introduced by Senator Perata

February 22, 2005

An act to amend Section 41326 of, and to add Section 52055.58 to, the Education Code, relating to education.

LEGISLATIVE COUNSEL'S DIGEST

SB 821, as amended, Perata. School districts: state-appointed administrators: annual updates: school restructuring.

(1) Existing law provides for emergency apportionments made by the state to school districts that are experiencing financial problems or that become insolvent. Existing law requires the Superintendent of Public Instruction to appoint a trustee to any school district that has accepted emergency apportionments because it has determined during a fiscal year that its revenues are less than the amount necessary to meet its current year expenditure obligations.

Existing law further provides that if a school district accepts an emergency apportionment that exceeds an amount equal to 200% of the amount of reserve recommended for that district, as specified, the Superintendent must, among other things, assume the legal rights, duties, and powers of the governing board of the school district and appoint an administrator to act on his or her behalf.

Existing law requires the Superintendent and the state-appointed administrator to prepare reports and plans, including a management

review and recovery plan, a multiyear financial recovery plan, and an annual report on the financial condition of the school district, as specified.

This bill would require, for the period of time during which the Superintendent is assuming the legal rights, duties, and powers of the governing board and has appointed an administrator to act on his or her behalf, the Superintendent to annually appear with the administrator at a regularly scheduled meeting of the governing board in order to provide an update on the reports and plans described above. The bill would also make the meeting subject to notice requirements applicable to regularly scheduled meetings and require the governing board to give members of the public the opportunity to participate in the portion of the meeting during which the update is provided.

(2) Existing law, the Early Warning Program and the Prevention of Local Educational Agency Intervention Program, provides for a voluntary self-assessment process for local educational agencies that are in danger of being identified as program improvement local educational agencies under the federal No Child Left Behind Act of 2001 and allows those local educational agencies to participate in a prevention program that provides support and funding in order to improve pupil academic achievement. Existing law requires the State Department of Education, for purposes of complying with the federal No Child Left Behind Act of 2001, to establish a Statewide System of School Support to provide a statewide system of intensive and sustained support and technical assistance for school districts and county offices of education with schools in need of improvement.

This bill would require a school district or county office of education with a school that is subject to corrective action of restructuring under the federal No Child Left Behind Act of 2001 to provide written notice, as specified, to the teachers of the school, the parents or guardians of the pupils at the school, and the exclusive representative, if any, of certificated and classified employees of the school district or charter school that the school is required to develop a plan for adopting one of 5 alternative governance arrangements, to convene a series of monthly public meetings, as provided, at the schoolsite for the purpose of soliciting public comment on and involvement in the development of a plan for alternative governance of the school, and to establish and appoint a schoolsite planning team, composed of specified members, for the purpose of developing a

report on restructuring the school, thereby imposing a state-mandated local program. The bill would require the school district or county office of education to provide staff and technical support to the schoolsite planning team and would require the schoolsite planning team to submit its report for approval to the governing board of the school district or county office of education no later than 6 months after the beginning of the school year.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 41326 of the Education Code is
2 amended to read:
3 41326. (a) Notwithstanding any other provision of this code,
4 the acceptance by a school district of an apportionment made
5 pursuant to Section 41320 that exceeds an amount equal to 200
6 percent of the amount of the reserve recommended for that
7 district under the standards and criteria adopted pursuant to
8 Section 33127 constitutes the agreement by the district to the
9 conditions set forth in this article. Prior to applying for an
10 emergency apportionment in the amount identified in this
11 subdivision, a school district governing board shall discuss the
12 need for that apportionment at a regular or special meeting of the
13 governing board and, at that meeting, shall receive testimony
14 regarding the apportionment from parents, exclusive
15 representatives of employees of the district, and other members
16 of the community. For purposes of this article, “qualifying school
17 district” means a school district that accepts a loan as described
18 in this subdivision.

(b) The Superintendent shall assume all the legal rights, duties, and powers of the governing board of a qualifying school district. The Superintendent, in consultation with the county superintendent of schools, shall appoint an administrator to act on his or her behalf in exercising the authority described in this subdivision in accordance with all of the following:

(1) The administrator shall serve under the direction and supervision of the Superintendent until terminated by the Superintendent at his or her discretion. The Superintendent shall consult with the county superintendent of schools before terminating the administrator.

(2) The administrator shall have recognized expertise in management and finance.

(3) To facilitate the appointment of the administrator and the employment of any necessary staff, for the purposes of this section, the Superintendent of Public Instruction is exempt from the requirements of Article 6 (commencing with Section 999) of Chapter 6 of Division 4 of the Military and Veterans Code and Part 2 (commencing with Section 10100) of the Public Contracts Code.

(4) Notwithstanding any other law, the Superintendent may appoint an employee of the state or the office of the county superintendent of schools to act as administrator for up to the duration of the administratorship. During the tenure of his or her appointment, the administrator, if he or she is an employee of the state or the office of the county superintendent of schools, is an employee of the school district, but shall remain in the same retirement system under the same plan that has been provided by his or her employment with the state or the office of the county superintendent of schools. Upon the expiration or termination of the appointment, the employee shall have the right to return to his or her former position, or to a position at substantially the same level as that position, with the state or the office of the county superintendent of schools. The time served in the appointment shall be counted for all purposes as if the administrator had served that time in his or her former position with the state or the office of the county superintendent of schools.

(5) Except for an individual appointed as an administrator by the Superintendent of Public Instruction pursuant to paragraph

(4), the administrator shall be a member of the State Teachers' Retirement System, if qualified, for the period of service as administrator, unless he or she elects in writing not to become a member. A person who is a member or retirant of the State Teachers' Retirement System at the time of appointment shall continue to be a member or retirant of the system for the duration of the appointment. If the administrator chooses to become a member or is already a member, the administrator shall be placed on the payroll of the school district for the purposes of providing appropriate contributions to the system. The Superintendent may also require the administrator to be placed on the payroll of the school district for purposes of remuneration, other benefits, and payroll deductions.

(6) For the purposes of workers' compensation benefits, the administrator is an employee of the qualifying district, except that an administrator appointed pursuant to paragraph (4) may be deemed an employee of the state or office of the county superintendent of schools, as applicable.

(7) The qualifying district shall add the administrator as a covered employee of the school district all for purposes of errors and omissions liability insurance policies.

(8) The salary and benefits of the administrator shall be established by the Superintendent of Public Instruction and paid by the qualifying school district.

(9) The Superintendent or the administrator may, on a short-term basis, employ at district expense any staff necessary to assist the administrator, including, but not limited to, a certified public accountant.

(10) The administrator may do all of the following:

(A) Implement substantial changes in the fiscal policies and practices of the district, including, if necessary, the filing of a petition under Chapter 9 of the federal Bankruptcy Code for the adjustment of indebtedness.

(B) Revise the educational program of the district to reflect realistic income projections and pupil performance relative to state standards.

(C) Encourage all members of the school community to accept a fair share of the burden of the fiscal recovery of the district.

(D) Consult, for the purposes described in this subdivision, with the governing board of the school district, the exclusive

1 representatives of the employees of the district, parents, and the
2 community.

3 (E) Consult with, and seek recommendations from, the
4 Superintendent, county superintendent of schools, and the
5 County Office Fiscal Crisis and Management Assistance Team
6 authorized pursuant to subdivision (c) of Section 42127.8 for the
7 purposes described in this article.

8 (F) With the approval of the Superintendent, enter into
9 agreements on behalf of the district and, subject to any
10 contractual obligation of the district, change any existing district
11 rules, regulations, policies, or practices as necessary for the
12 effective implementation of the recovery plans referred to in
13 Sections 41327 and 41327.1.

14 (G) For the period of time during which the Superintendent
15 exercises the authority described in this subdivision, the
16 Superintendent shall annually appear with the administrator at a
17 regularly scheduled meeting of the governing board in order to
18 provide an update on the reports and plans described in Section
19 41327. This meeting is subject to the notice requirements
20 applicable to regularly scheduled meetings of the governing
21 board. The governing board shall provide members of the public
22 the opportunity to participate in the portion of the meeting during
23 which the update is provided.

24 (c) (1) For the period of time during which the Superintendent
25 of Public Instruction exercises the authority described in
26 subdivision (b), the governing board of the qualifying school
27 district shall serve as an advisory body reporting to the
28 state-appointed administrator, and has no rights, duties, or
29 powers, and is not entitled to any stipend, benefits, or other
30 compensation from the district.

31 (2) Upon the appointment of an administrator pursuant to this
32 section, the district superintendent of schools is no longer an
33 employee of the district.

34 (3) A determination of the severance compensation for the
35 district superintendent shall be made pursuant to subdivision (j).

36 (d) Notwithstanding Section 35031 or any other law, the
37 administrator may, after according the employee reasonable
38 notice and the opportunity for a hearing, terminate the
39 employment of any deputy, associate, assistant superintendent of
40 schools, or any other district level administrator who is employed

1 by a school district under a contract of employment signed or
2 renewed after January 1, 1992, if the employee fails to document,
3 to the satisfaction of the administrator, that prior to the date of
4 the acceptance of the apportionment he or she either advised the
5 governing board of the district, or his or her superior, that actions
6 contemplated or taken by the governing board could result in the
7 fiscal insolvency of the district, or took other appropriate action
8 to avert that fiscal insolvency.

9 (e) The authority of the Superintendent, and the administrator,
10 under this section shall continue until all of the following occur:

11 (1) (A) At any time after one complete fiscal year has elapsed
12 following the district's acceptance of a loan as described in
13 subdivision (a), the administrator determines, and so notifies the
14 Superintendent and the county superintendent of schools, that
15 future compliance by the school district with the recovery plans
16 approved pursuant to paragraph (2) is probable.

17 (B) The Superintendent may return power to the governing
18 board for any area listed in subdivision (a) of Section 41327.1 if
19 performance under the recovery plan for that area has been
20 demonstrated to the satisfaction of the Superintendent.

21 (2) The Superintendent has approved all of the recovery plans
22 referred to in subdivision (a) of Section 41327 and the County
23 Office Fiscal Crisis and Management Assistance Team completes
24 the improvement plans specified in Section 41327.1 and has
25 completed a minimum of two reports identifying the district's
26 progress in implementing the improvement plans.

27 (3) The administrator certifies that all necessary collective
28 bargaining agreements have been negotiated and ratified, and that
29 the agreements are consistent with the terms of the recovery
30 plans.

31 (4) The district has completed all reports required by the
32 Superintendent and the administrator.

33 (5) The Superintendent determines that future compliance by
34 the school district with the recovery plans approved pursuant to
35 paragraph (2) is probable.

36 (f) When the conditions stated in subdivision (e) have been
37 met, and at least 60 days after the Superintendent of Public
38 Instruction has notified the Legislature, the Department of
39 Finance, the Controller, and the county superintendent of schools
40 that he or she expects the conditions prescribed pursuant to this

1 section to be met, the school district governing board shall regain
2 all of its legal rights, duties, and powers, except for the powers
3 held by the trustee provided for pursuant to Article 2
4 (commencing with Section 41320). The Superintendent shall
5 appoint a trustee under Section 41320.1 to monitor and review
6 the operations of the district until the conditions of subdivision
7 (b) of that section have been met.

8 (g) Notwithstanding subdivision (f), if the district violates any
9 provision of the recovery plans approved by the Superintendent
10 pursuant to this article within five years after the trustee
11 appointed pursuant to Section 41320.1 is removed, the
12 Superintendent may reassume, either directly or through an
13 administrator appointed in accordance with this section, all of the
14 legal rights, duties, and powers of the governing board of the
15 district. The Superintendent shall return to the school district
16 governing board all of its legal rights, duties, and powers
17 reassumed under this subdivision when he or she determines that
18 future compliance with the approved recovery plans is probable,
19 or after a period of one year, whichever occurs later.

20 (h) Article 2 (commencing with Section 41320) shall apply
21 except as otherwise specified in this article.

22 (i) It is the intent of the Legislature that the legislative budget
23 subcommittees annually conduct a review of each qualifying
24 school district that includes an evaluation of the financial
25 condition of the district, the impact of the recovery plans upon
26 the district's educational program, and the efforts made by the
27 state-appointed administrator to obtain input from the community
28 and the governing board of the district.

29 (j) (1) The district superintendent is entitled to a due process
30 hearing for purposes of determining final compensation. The
31 final compensation of the district superintendent shall be between
32 zero and six times his or her monthly salary. The outcome of the
33 due process hearing shall be reported to the Superintendent of
34 Public Instruction and the public. The information provided to
35 the public shall explain the rationale for the compensation.

36 (2) This subdivision applies only to a contract for employment
37 negotiated on or after June 21, 2004.

38 (k) (1) When the Superintendent assumes control over a
39 school district pursuant to subdivision (b), he or she shall, in
40 consultation with the County Office Fiscal Crisis and

1 Management Assistance Team, review the fiscal oversight of the
2 district by the county superintendent of schools. The
3 Superintendent may consult with other fiscal experts, including
4 other county superintendents of schools and regional fiscal teams
5 in conducting this review.

6 (2) Within three months of assuming control over a qualifying
7 district, the Superintendent shall report his or her findings to the
8 Legislature and shall provide a copy of that report to the
9 Department of Finance. This report shall include findings as to
10 fiscal oversight actions that were or were not taken and may
11 include recommendations as to an appropriate legislative
12 response to improve fiscal oversight.

13 (3) If after performing the duties described in paragraphs (1)
14 and (2), the Superintendent determines that the county
15 superintendent of schools failed to carry out his or her
16 responsibilities for fiscal oversight as required by this code, the
17 Superintendent may exercise the authority of the county
18 superintendent of schools who has oversight responsibilities for a
19 qualifying school district. If the Superintendent finds, based on
20 the report required in paragraph (1), that the county
21 superintendent of schools failed to appropriately take into
22 account particular types of indicators of financial distress or
23 failed to take appropriate remedial actions in the qualifying
24 district, the Superintendent shall further investigate whether the
25 county superintendent of schools failed to take into account those
26 indicators or similarly failed to take appropriate actions in other
27 districts with negative or qualified certifications and shall
28 provide an additional report on the fiscal oversight practices of
29 the county superintendent to the appropriate policy and fiscal
30 committees of each house of the Legislature and the Department
31 of Finance.

32 SEC. 2. Section 52055.58 is added to the Education Code, to
33 read:

34 52055.58. In implementing subparagraph (C) of paragraph (8)
35 of subsection (b) of Section 6316 of Title 20 of the United States
36 Code, under the federal No Child Left Behind Act of 2001 (20
37 U.S.C. Sec. 6301 et seq.), a school district or county office of
38 education with a school that is subject to corrective action under
39 paragraph (8) of subsection (b) of Section 6316 of Title 20 of the
40 United States Code shall do all of the following:

(a) Provide written notice to the teachers of the school, the parents or guardians of the pupils at the school, and the exclusive representative, if any, of certificated and classified employees of the school district or charter school that the school is required to develop a plan for adopting one of the five alternative governance arrangements described in subparagraph (B) of paragraph (8) of subsection (b) of Section 6316 of Title 20 of the United States Code.

(1) The notice shall include all of the following information:

(A) A description of each of the five alternative governance arrangements.

(B) That teachers and parents or guardians have a right to comment on and participate in the development of an alternative governance plan.

(C) The date and time for the first of the monthly public meetings to be convened by the school district or county office of education at the school.

(2) The notice shall be sent to each teacher and parent or guardian before the beginning of the school year during which the plan for alternative governance will be developed and again at least seven days before the date of the first public meeting.

(3) The notice shall be prominently posted at each entrance to the school and in the main office of the school.

(b) Convene a series of public meetings at the schoolsite for the purpose of soliciting public comment on and involvement in the development of a plan for alternative governance of the school.

(1) The meetings shall be held at the schoolsite at least once each month of the school year during which the plan for alternative governance is being developed.

(2) The teachers of the school and the parents or guardians of the pupils at the school shall receive written notice of each meeting at least seven days before each meeting.

(3) The meetings shall be attended by the superintendent of the school district or county office of education and the members of the schoolsite planning team, as developed pursuant to subdivision (c).

(4) At the meetings, the school district or county office of education shall solicit input from the teachers and parents or guardians regarding the actions that should be taken to comply

1 with the restructuring requirements of the federal No Child Left
2 Behind Act of 2001 (20 U.S.C. Sec. 6301 et seq.).

3 (c) Establish and appoint a schoolsite planning team,
4 composed of teachers, school administrators, *classified*
5 *employees*, parents, guardians, pupils, and members of the
6 community, for the purpose of developing a report on
7 restructuring the school.

8 (1) The school district or county office of education shall
9 provide staff and technical support to assist the schoolsite
10 planning team in the development of the report.

11 (2) In producing and developing the report, the schoolsite
12 planning team shall consider the opinions, comments, and
13 recommendations submitted to the team at the monthly public
14 meetings required to be held pursuant to subdivision (b).

15 (3) The schoolsite planning team shall submit the report to the
16 governing board of the school district or county office of
17 education for approval no later than six months after the
18 beginning of the school year.

19 SEC. 3. No reimbursement is required by this act pursuant to
20 Section 6 of Article XIII B of the California Constitution because
21 this act implements a federal law or regulation and results in
22 costs mandated by the federal government, within the meaning of
23 Section 17556 of the Government Code.

24 However, if the Commission on State Mandates determines
25 that this act contains other costs mandated by the state,
26 reimbursement to local agencies and school districts for those
27 costs shall be made pursuant to Part 7 (commencing with Section
28 17500) of Division 4 of Title 2 of the Government Code.